IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1520 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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KADARKHAN LIYAKATKHAN PATHAN

Versus

COMMISSIONER OF POLICE BARODA CITY

Appearance:

1. Special Civil Application No. 1520 of 2001

MS DR KACHHAVAH for Petitioner No. 1

MR HL JANI ASSTT GOVERNMENT PLEADER for Respondent No. 1-3

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 07/08/2001

ORAL JUDGEMENT

#. Heard Ms.D.R.Kachhavah, learned advocate appearing on behalf of the petitioner and Mr.H.L.Jani, learned AGP on behalf of the respondents. In the present petition the order of detention dated 9th January, 2001 has been challenged by the petitioner under Article 226

of the Constitution of India. The order of detention has been passed by the Police Commissioner, Vadodara City under Section 3[1] of the PASA Act. The present petitioner has been detained at Special Jail Porbandar as Class-II detenu. The grounds of detention are communicated and supplied to the petitioner under Section 9[1] of the PASA Act. Looking to the grounds of detention, two offence have been registered against the present petitioner and last registered offence is dated 10th December, 2000. The statements of the secret witnesses were recorded by the concerned authority and the same are verified by the detaining authority. Unregistered offence dated 29th October, 2000, 25th November, 2000 and 3rd December, 2000 are noted against the present petitioner on the basis of the statements of the secret witnesses. The petitioner has been considered as dangerous person. The respondents has filed affidavit in reply.

#. Learned advocate Ms.D.R.Kachhavah appearing on behalf of the petitioner raised various contentions challenging the detention order but according to her submission, one or two contentions are enough to vitiate the order of detention. She submitted that the order of detention dated 9th January, 2001 approved by the State Government on 15th January, 2001. The representation dated 5th February, 2001 which is at pg.88 submitted by the petitioner to the detaining authority which received by the detaining authority on 6th February, 2001 forwarded to the State Government on 1st March, 2001. Therefore, she submitted that there is delay in forwarding the representation to the State Government by the detaining authority without any justification and therefore this delay has adversely affected the right of the petitioner from making effective representation immediately and which ultimately violated Article 22[5] of the Constitution of India. She also submitted that a specific contention to that effect has been raised by the petitioner in para-11 of the petition that there is delay in forwarding the representation to the State Government because the order of detention was already approved by the State Government therefore, thereafter the detaining authority has no power to consider the representation of the petitioner. Therefore, it is the duty of the detaining authority after receiving representation immediately without any delay and same ought to have been forwarded the representation to the concerned authority in the State Government. But in the instant case, according to her, there was delay for more than 25 days in forwarding the representation to the State Government. She also relied upon a decision of Division Bench of this

Court in a reported case 1994 [2] GLH [U.J.] pg.10.

#. Learned AGP Mr.H.L.Jani, appearing on behalf of the respondents has submitted that looking to the facts and circumstances and materials which are on record, the order of detention has been rightly passed by the detaining authority. There were compelling circumstances for passing the detention order and the detaining authority had no option but to pass the detention order, otherwise, the activities carried out by the petitioner, would have adversely affected and disturbed the public order. Therefore, according to his submission, the order of detention is legal and valid. He also submitted that there was no delay in forwarding the representation because the representation dated 5th February, 2001, as per the reply, para-9 of the detaining authority to the representation has been received by the detaining authority on 6th February, 2001 and after considering the relevant papers from the concerned police authority, the representation has been forwarded by the detaining authority to the State Government on 1st March, 2001, therefore, delay is justified for collection of the material for taking appropriate decision of the representation and the same has been supplied by the detaining authority to the State Government along with the representation and therefore, there is no delay, as such which vitiates the order of detention. Therefore, he submitted that in such situation, no interference is required by this Court.

#. I have considered the submissions of both learned advocates. One undisputed fact remains between the parties that the representation has been submitted by the petitioner on date 5th February, 2001 to the detaining authority which received by the detaining authority on 6th February, 2001 but prior to that, the order of detention dated 9th January, 2001 has been approved by the State Government on 15th January, 2001. Therefore, when the representation was received by the detaining authority, the detaining authority has no power to consider or to take any decision on representation which was submitted by the petitioner. Therefore, in such situation, it is the duty of the detaining authority to forward the representation to the State Government without any delay but in the present case, there was delay of more than 25 days in forwarding the representation and the reasons given by the detaining authority that for taking decision on representation by the State Government and for that certain materials are required to be collected from the different police stations and therefore, there was delay in forwarding the

representation. The question is that when the detaining authority was not able to take any decision on representation after the order had been approved by the State Government, then the detaining authority should not have waited even for a single day for forwarding the representation to the State Government. It is not necessary for detaining authority to collect the materials from different police stations for taking decision on representation. In case if, the Government had asked for necessary information, then they could have supplied the same but, for such reasons, they cannot withhold forwarding of the representation to the State Government. Therefore, delay remained unexplained and the explanation given is not sufficient enough to justify the delay because fact remains that there was delay in forwarding the representation to the State Government. Therefore, the view taken by the Division Bench of this Court in case URMILABEN NAVNITLAL GANDHI VS. THE COMMISSIONER OF POLICE SURAT CITY AND OTHERS reported in 1994 [2] GLH [UJ] 10. The relevant observations of this decision are as under :-

"The proposal for detention of the detenu was made on 18th September, 1993. The order of detention was passed and served to the detenu by the Commissioner of Police, Surat City on 22nd September, 1993 and the matter was referred to the Advisory Board which gave its opinion in favour of the detention on 5th November, 1993. Thereafter, the State Government confirmed the detention order on 18th November, 1993. In the meantime, a representation was preferred by or on behalf of the detenu on 12th October 1993, which was received by the detaining authority on 14th October, 1993. The detaining authority rejected the representation on 15th October, 1993.

Referring to the decision in Navalshakar Ishwarlal Dave Vs. State of Gujarat, AIR 1994 SC 1496, it is observed that the detaining authority has no power to consider the representation of the detenu after the order of detention is approved by the State Government.

Further more, the Court noted that the detaining authority received the representation on 14th November, 1993 and it rejected the same on 15th October, 1993. The representation was forwarded to the State Government on 16th October, 1993. The office,. however, forwarded it to the State Government on 19th / 21st October, 1993. The

same was received on 26th October, 1993 and rejected by the State Government on 27th October, 1993. The delay of 5 days, i.e. from 16th October to 21st October, 1993 in forwarding the representation has not been explained by the respondents in any manner except that Shri Shelat for respondents has urged that one holiday intervened. The Court observed that the office of the detaining authority was not alive to the urgency of forwarding the representation to the State Government for its consideration on merits. Applying the ratio of Harish Pahava V. State of Uttar Pradesh, AIR 1981 SC 1126, wherein similar delay was held to be unreasonable, vitiating the continued detention of the detenu, the delay of five days on the part of the office of the Commissioner of Police, Surat City in forwarding the representation against the detention of the detenu was thus unreasonable and not properly explained vitiating the continued detention of the detenu."

The second decision in case of SALIM POTHIYA REHMANBHIA BELIA VS. DISTRICT MAGISTRATE, MEHSANA reported in 1994 [2] GLH [U.J.] 11, the relevant observations are as under :-

"The proposal of detention was moved on 27th June, 1993. The District Magistrate, Mehsana passed the order of detention of the petitioner on 18th September, 1993 and served the same on the petitioner on 2nd December, 1993. The order of detention was approved by the State Government on 23rd September, 1993. The Advisory Board gave its opinion on 6th January, 1994 in favour of the continued detention of the petitioner. The State Government confirmed the order of detention on 15th January, 1994. The petitioner made a representation against his detention on 3rd February, 1994 and addressed the same to the District Magistrate, District Mehsana who rejected the same on 5th February, 1994.

Relying on Navalshankar Ishwarlal Dave V. State of Gujarat, AIR 1994 SC 1496, it is held that the detaining authority is left with no power to consider and to reject any representation received from the detenu against his detention even if it is addressed to the detaining

> authority and the detaining authority has to pass on the representation to the State Government for its consideration. In the present case, it is not in dispute that the petitioner's representation, made after the State Government had confirmed the detention, was not forwarded to the State Government for its consideration on its merits. Such inaction on the pat of the District Magistrate, District Mehsana vitiated the continued detention of the petitioner."

#. In view of observations and ratio observed by the Division Bench of this Court in both these cases squarely apply to the facts and circumstances of the present case. In the instant case also, there is delay of more than 25 days in forwarding the representation by the detaining authority to the State Government and explanation which has been given by the respondents in the affidavit in reply is not enough to justify the delay and therefore, according to my opinion, the order of detention on this ground is required to be quashed and set aside.

#. In the result, the present petition succeeds. The order of detention dated 9th January, 2001 passed by the Police Commissioner, Vadodara City is hereby quashed and set aside. The present petitioner - detenu Kadarkhan Liyakatkhan Pathan who has been detained at Special Jail, Porbandar is ordered to be released immediately it he is not required in any other case. Rule is made absolute accordingly.

Date : 7-8-2001 [H.K.Rathod, J.]

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